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March 10, 2023

VIA CM/ECF

The Honorable Richard Andrews  
United States District Judge  
J. Caleb Boggs Federal Building  
844 N. King Street  
Unit 9, Room 6325  
Wilmington, DE 19801-3555

Re: Berk v. Choy, M.D., No. 22-1506

Dear Judge Andrews:

Your Honor when I received your Show Cause Order yesterday, it appeared to me that you had rejected my argument that based on the recent decisions of the Second, Fourth, Sixth, Seventh and Ninth Circuits that the Delaware Affidavit of Merit requirements are not applicable to a diversity action in federal court.

Since you indicated that you would dismiss the action if there were not a Delaware Affidavit of Merit, I had to assume that you were not persuaded by the decisions cited in my Memorandum opposing the defendants' Motions. I therefore filed a Notice of Appeal from what appeared to be a final judgment of dismissal.

But I am not now sure that was your intent. The case has now been docketed in the Third Circuit. But the Rules of the Third Circuit permit a district judge to prepare and file a Memorandum Opinion within thirty days supporting an Order. But I do not mean to box you into writing an opinion rejecting my argument.

So, I am writing seeking your advice as to how to proceed. If you would prefer to write an opinion rejecting my argument, so be it, but if you wanted to

agree with my position, I could either dismiss the appeal or stay consideration pending your decision.

With all due respect, maybe we both jumped too quickly.

Respectfully,

*Harold R. Berk*

Harold R. Berk, Plaintiff, Pro Se

cc: All Counsel